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Attorneys for Defendant MTI Baths

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH – CENTRAL DIVISION

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| AG-WIP 333 Main Street Owner, LLC, Plaintiff, MTI BATHS and DOES 1 THROUGH 50, Defendants. | Case No: NOTICE OF REMOVAL OF ACTION TO UNITED STATES DISTRICT COURT *JURY DEMANDED* |
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Pursuant to [28 U.S.C. §§ 1332, 1441, and 1446\(b\)\(3\)](#), Defendant MTI Baths (“MTI”) hereby removes this action from the Third Judicial District Court, Salt Lake County, State of Utah, where it is now pending, to the United States District Court for the District of Utah. This Court has subject-matter jurisdiction over this action under [28 U.S.C. § 1332](#). In support of this removal, MTI states as follows:

JURISDICTION

1. Under 28 U.S.C. §1441(a), a defendant in a civil action has a statutory right to remove a case from state court to the federal district court where that case could have originally been filed.

2. Federal district courts have original jurisdiction over civil actions where the matter in controversy exceeds \$75,000, exclusive of interests and costs, and is between “citizens of different states.” 28 U.S.C. §1332(a).

3. Removal is proper in this case because the amount in controversy exceeds the jurisdictional amount and there is complete diversity of citizenship.

AMOUNT IN CONTROVERSY

4. The complaint alleges damages to qualify for “Tier 3” status under the Utah R. Civ. P. 26(c)(3), which indicates that the amount of damages being claimed by Plaintiff is \$300,000 or more. *See Utah R. Civ. P. 8(a) and 26(c)(3)*. Further, Plaintiff alleges repair costs “which is estimated to exceed \$166,000.” Compl. at ¶ 13, attached as **Exhibit 1**.

5. Wherefore the amount in controversy, exclusive of interest and costs, exceeds the \$75,000 jurisdictional threshold.

CITIZENSHIP OF THE PARTIES

6. Plaintiff is a citizen of Utah. *See* Compl. at ¶¶ 1, 7.

7. Plaintiffs allege that MTI is “a corporation with its principal place of business in Salt Lake City, Utah.” *Id.* at ¶ 2. This statement is incorrect. MTI’s principal place of business is in Georgia. *See* Dec. of Randy Maner at ¶¶ 3-5, attached as **Exhibit 2**. Under 28 U.S.C. §

1332(c)(1), a corporation is deemed a citizen in two places: (1) the state where it is incorporated, and (2) the state where it has its “principal place of business”).

8. Based on these allegations, there is complete diversity of citizenship.

REMOVAL IS PROPER

9. The criteria for removal have been met. The amount in controversy exceeds the jurisdictional amount, and there is complete diversity of citizenship.

10. This Notice of Removal is timely because it was filed within thirty days after service of the complaint. *See 28 U.S.C. 1446(b)*. Further, this Notice is timely in that it is filed within one year after commencement of the action. *See 28 USC §1446(c)*.

11. Pursuant to statute, written notice of removal will be served on all other parties. MTI will also file a Notice of Removal in the Third Judicial District Court of Salt Lake County, State of Utah, a copy of which is attached as **Exhibit 3**. *See 28 USC §1446(d)*.

12. MTI has attached as exhibits to this Notice of Removal a copy of all process, orders, papers, and pleadings served upon it in the Third Judicial District Court of Salt Lake County, State of Utah, and incorporate the same by reference. These include:

a. Complaint, attached as Exhibit 1.

13. MTI reserves the right to amend or supplement this Notice of Removal.

14. Notwithstanding this removal, MTI reserves the right to challenge whether Utah courts may exercise personal jurisdiction MTI as well as all other defenses.

WHEREFORE, this case is and should be removed to the United States District Court for the District of Utah, Central Division. The Third Judicial District Court of Salt Lake County, State of Utah, shall accordingly proceed no further in this action.

DATED this 15th day of February, 2019.

SNELL & WILMER L.L.P.

/s/ Tracy H. Fowler

Tracy H. Fowler

Ben T. Welch

Attorneys for MTI Baths

CERTIFICATE OF SERVICE

The undersigned certifies that on this February 15, 2019, a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel who have entered an appearance in this action. Additionally, Plaintiff was served through its attorney of record at the following email address:

James J. Orland
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/s/ Tracy H. Fowler